

Proposed Amendment for Publication in the Register

25 NCAC 01J .1306 is proposed for amendment as follows:

25 NCAC 01J .1306 BACK PAY

In grievances:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any **gross** interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount **due.** ~~due if the unemployment insurance benefits were not taxed when received by the employee.~~
- (4) All applicable State and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across-the-board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:

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- (a) agency or university name;
- (b) division or department or school;
- (c) employee name;
- (d) employee social security number;
- (e) position classification;
- (f) position number; and
- (g) a notarized sworn statement verifying the following information for a total earnings calculation:

~~(i) gross earnings for back pay;~~

~~(ii)(i)~~ gross interim income, not including secondary employment approved prior to adverse action; and

~~(iii)(ii)~~ unemployment compensation, compensation (untaxed).

- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available employment following separation from State government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

History Note: Authority G.S. 126-4(9); 126-34.01; 126 -34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018, 2018;
Amended Eff.